

## Talking to Amalgamated Bank about Shareholder Proposals and Shareholder Communications

July 24, 2013 | Client Update | 4-minute read

Amalgamated Bank's LongView LargeCap 500 Index Fund and UAW Retiree Medical Benefits Trust have filed a novel clawback shareholder proposal at McKesson. The proposal asks that the company's existing policy be amended to (a) remove the requirement that the trigger be based on intentional misconduct related to financial reporting that requires a restatement or conduct that produces a material negative result and (b) report to shareholders about deliberations to recoup compensation unless privacy concerns outweigh disclosure benefits. We discussed this proposal and shareholder matters with Scott Zdrail, First Vice President-Director of Corporate Governance, at Amalgamated, an active investor on governance issues.

*Purpose of the Proposal.* Scott explained that Amalgamated supports clawbacks as a way to underscore pay for performance. McKesson has entered a number of legal and regulatory settlements and the proponents were concerned that they have not seen any indication that the "clawback has been put to use." They also do not believe that a clawback should be triggered based on intentional misconduct but rather compensation should be adjusted if the numbers on which they were based turned out to be inaccurate. In addition, they are concerned that the policy is only triggered if embezzlement or fraud reaches a materiality threshold. ISS and Glass Lewis are both supporting the proposal. Amalgamated has shared information with those firms and is pleased that they concur.

*Engagement with Companies.* Amalgamated submits about two dozen resolutions each season. Scott stated that there is almost always a dialogue with companies about those shareholder proposals, and his advice for companies is to "pick up the phone," since they always welcome a discussion and he believes that companies would find it useful to understand what motivates a shareholder to provide proposals. He indicated that engagement is on the rise and the vast majority of their proposals are withdrawn because engagement leads to solutions. Even if a company believes initially that it will not adopt the shareholder request in the proposal, it is important to understand the investors and their concerns.

Another reasons why companies should engage with Amalgamated and others that raise questions is to get to know their investors and their issues, according to Scott. He stated that the dialogues behind the scenes can be very constructive, and understanding your shareholder base will help navigate the company to an appropriate response. In addition, Scott indicated that the governance community on the investor side also knows each other and sometimes partner on a proposal to "increase the volume of our voice," and companies that do not talk to proponents may be hurting themselves. He recommends talking not only to the largest shareholders but also those who like to be engaged and vocal; companies should also keep abreast of major developments in governance.

While there continue to be companies that avoid engagement, Scott explained that the evolution in shareholder communications has allowed Amalgamated to avoid the Rule 14a-8 route and simply discuss concerns with companies through letters or other means, whereas 20 years ago a shareholder proposal was the only option for a smaller shareholder to get attention.

*Governance Issues of Interest.* Since they rely on elected board members to serve their interest, Amalgamated is particularly interested in board structures such as annual elections and majority voting for directors to ensure directors are responsive.

Other topics of focus include compensation and social issues. Several years ago they begin submitting shareholder proposals seeking pro rata vesting in the event of a change in control. They are concerned that executives may receive a “windfall” upon a change of control regardless of performance. While they applaud companies that have moved to a double-trigger, they do not believe that double-triggers sufficiently address the concern regarding the performance basis for payouts. They have started discussions with a number of companies around pro rata vesting instead.

Scott suggested that many investors are currently focused on transparency and oversight regarding the use of corporate assets spent in the political arena. In their view, boards should be aware of how corporate funds are distributed and also disclose the information to investors, as well as review that political spending is aligned with corporate strategy.

*Focus on Particular Companies.* Like many investors, Amalgamated will focus their attention on under-performing companies. However, there are some topics that they believe are important across all companies, such as clawbacks. Amalgamated was the first fund to file a shareholder proposal on clawbacks in 2004. Scott believes that the widespread adoption of clawbacks reflects the fact that they are positive provisions that underscore the importance of pay for performance at all companies. Events this season have shown that we may be entering into “Clawback 2.0” as different models are coming out, with for example, some pharmaceutical companies vowing to take action when there is a significant failure of supervision that has a significant impact on financial results, which we previously discussed [here](#).

*Use of Notice of Exempt Solicitations.* Amalgamated has filed several notices of exempt solicitations with respect to the McKesson proposal. Scott affirmed that, on some initiatives, the exempt solicitations can allow for additional details and information that are beyond some of the limits of what the rules allow for a shareholder proposal.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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